DOCUMENT RESUME

ED 157 151 EA 010 693

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TITLE The Unenforced Law: Title IX Activity by Federal Agencies other than HEW. Report.
INSTITUTION National Advisory Council on Women's Educational Programs, Washington, D.C.
PUB DATE Jan 78
NOTE 64p.; Summary Tables may not reproduce clearly due to small print
AVAILABLE FROM Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock No. 017-080-01840-3; $2.30)

EDRS PRICE MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS Education; Elementary Secondary Education; *Federal Government; *Federal Legislation; Higher Education; *Interagency Coordination; Legislation; *Sex Discrimination
IDENTIFIERS *Education Amendments 1972 Title IX

ABSTRACT

The purposes of this report are to identify which federal agencies other than the Department of Health, Education, and Welfare have educational programs covered by Title IX; to survey those agencies to determine if they are enforcing Title IX by means of regulations, orders, or termination of funding; to identify problems of intragovernmental coordination for uniform enforcement. This survey is only preliminary and places emphasis on Title IX's coverage of services or benefits to program participants rather than on coverage of employment. The survey resulted in three major findings. First, of the agencies having education/training programs subject only to Title IX, none has published Title IX regulations although the law is more than five years old. Second, of the agencies with double coverage of their programs, most were unaware of the applicability of Title IX or of the need for intragovernmental coordination of standards and enforcements. Third, there is no lead agency designated by executive order to coordinate enforcement of Title IX and other sex discrimination provisions. (Author/IRT)

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# The Unenforced Law: Title IX Activity by Federal Agencies other than HEW

Report of
THE NATIONAL ADVISORY COUNCIL
ON WOMEN'S EDUCATIONAL PROGRAMS

EA 010 693

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# THE UNENFORCED LAW:

## Title IX Activity by Federal Agencies Other Than HEW

BY

Nancy J. Balles Esq.

January, 1978

Report of
THE NATIONAL ADVISORY COUNCIL
ON WOMEN'S EDUCATIONAL PROGRAMS

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TABLE OF CONTENTS


| | | Page |
|---|---|---|
| | PREFACE | |
| I. | INTRODUCTION | 1 |
| | Scope of coverage of Title IX | 2 |
| | Overview of Federal outlays for education and training by agencies other than HEW | 4 |
| | Summary of major findings | 7 |
| II. | AGENCIES HAVING UNUSUAL ROLES IN RELATION TO TITLE IX ENFORCEMENT | 8 |
| | Federal Programs Section, The Justice Department | 8 |
| | Department of Health, Education and Welfare | 10 |
| | Office of Management and Budget | 12 |
| | Internal Revenue Service, Treasury Department | 16 |
| III. | AGENCIES WITH ALL OF THEIR EDUCATION PROGRAMS SUBJECT ONLY TO TITLE IX | 18 |
| | Agriculture Department | 18 |
| | Defense Department | 22 |
| | General Services Administration | 25 |
| | Interior Department | 25 |
| | National Foundation on the Arts and the Humanities | 27 |
| | National Science Foundation | 30 |
| | State Department | 32 |
| | Veterans Administration | 33 |

TABLE OF CONTENTS (Continued)


| | | Page |
|---|---|---|
| IV. | SUMMARY TABLES ON AGENCIES HAVING EDUCATION PROGRAMS SUBJECT TO BOTH TITLE IX AND TO A SEX DISCRIMINATION PROHIBITION IN AN AUTHORIZATION STATUTE | 38 |
| | Action | 38 |
| | Agency for International Development | 38 |
| | Appalachian Regional Commission | 38 |
| | Commerce Department | 39 |
| | Community Services Administration | 39 |
| | Energy Department | 39 |
| | Environmental Protection Agency | 40 |
| | Labor Department | 40 |
| | Law Enforcement Assistance Administration, Justice Department | 41 |
| | Small Business Administration | 42 |
| | Transportation Department | 42 |
| | Office of Revenue Sharing, Treasury Department | 43 |
| V. | RECOMMENDATIONS | 45 |
| | APPENDIX A | 47 |
| | APPENDIX B | 48 |

## PREFACE

The National Advisory Council on Women's Educational Programs was established by Congress in the Women's Educational Equity Act of 1974. Composed of seventeen members appointed by the President and three ex officio members, the Council is directed to advise the President, Congress and the Assistant Secretary for Education concerning equity for women and girls in educational programs in the United States.

The Council considers Title IX of the Education Amendments of 1972 to be crucial to the achievement of educational equity. It suspected that enforcement of Title IX by many Federal departments and agencies other than the Department of Health, Education and Welfare is limited or non-existent and therefore commissioned attorney Nancy Balles to undertake an initial survey. Time and resources limited the scope of her research, which relied heavily on telephone and personal interviews with personnel at twenty-four agencies. The Council is grateful for their cooperation with Ms. Balles. Both the heads of the agencies in question and the individuals interviewed were given an opportunity to review the draft report. The respondent agencies are listed in the Appendix and their comments have been incorporated.

The recommendations in this report were adopted unanimously by the National Advisory Council, which believes that their implementation would make a major contribution toward the goal of educational equity for women and girls. It is clear that many Federal agencies have much to do to comply with the key statute which prohibits sex discrimination in education. The Council hopes that this report will stimulate such action.

# I. INTRODUCTION

Title IX of the Education Amendments of 1972 prohibits sex discrimination against students and employees in Federally assisted education programs or activities.[1] The statute specifies enforcement by "each Federal department and agency empowered to extend Federal financial assistance to any education program or activity by way of grant, loan, or contract other than a contract of insurance or guaranty."[2]

The purposes of this report are multiple: first, to identify which Federal agencies other than the Department of Health, Education and Welfare (henceforth HEW) have educational programs which are covered by Title IX; second, to survey those agencies to determine if they are enforcing Title IX by means of regulations, orders or termination of funding; third, to identify problems of intra-Governmental coordination for uniform enforcement. In the five years since enactment of Title IX, this information has not been compiled in comprehensive or systematic form by the Federal Government or by private organizations. The latter have concentrated their monitoring efforts on HEW which gives grants and/or contracts to nearly every U.S. educational institution.

This survey is only preliminary. Although over twenty agencies were contacted, principally by telephone interviews, the information about each is limited and not an in-depth analysis. Where other relevant information sources were available, they were used. Particularly helpful were several reports issued by the U.S. Commission on Civil Rights concerning some of these agencies. Most of these reports are over two years old and hence partially outdated, but given the slow pace of change in some Federal agencies, the reports contain much information which is still valid today.

Finally, this report places emphasis on Title IX's coverage of services or benefits to program participants rather than on coverage of employment, because the former has received much less attention from Federal agencies. Educational employment is also covered by Title VII of the Civil Rights Act of 1964 (42 USC 2000(e)), by Executive Order 11246 as amended by 11375 (which applies to Federal contractors), and by the Equal Pay Act (29 USC 206(d)).

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[1]The key provision reads: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..." 20 USC 1681.

[2]20 USC 1682.

SCOPE OF COVERAGE OF TITLE IX

For proper perspective on this report, understanding the limits of Title IX's coverage of Federal programs is necessary. The Federal Government spends an enormous amount of money every year on external educational training programs. Although most of these expenditures will involve Title IX, there are some notable exceptions. Programs directly operated by the Federal Government are not covered because there is no "recipient" of Federal money. Examples are Bureau of Indian Affairs schools, the Agriculture Department's Graduate School for Federal employees, U.S. Merchant Marine Academy, Defense Department overseas school for military dependents, and the training programs for military and civilian employees of the Federal Government.

Programs which give money directly to individuals for educational benefits are covered by Title IX. Veterans' educational assistance programs (e.g. GI bill), the guaranteed student loan program, and the basic educational opportunity grant program are major examples. Institutions receiving such money from students in these programs are subject to Title IX.[3]

The term "Federal financial assistance" in Title IX has been defined very broadly. The definition in HEW's Title IX regulation includes the following: grants or loans, including money for construction, repair, etc. of buildings; surplus property; sale or lease of Federal property at reduced cost; the provision of the services of Federal personnel; and contracts which have as one of their purposes assistance to a program or activity.[4]

Since Title IX covers only "educational" programs or activities, the definition of "educational" is key in determining which programs are subject to Title IX. HEW has taken the position that Title IX coverage is not limited to programs conducted or sponsored by educational institutions.[5] The U.S. Commission on Civil Rights concurs in this view, stating that a review of the legislative history indicates that coverage is not limited to the formal classroom setting.[6] Hence, formal and informal education programs or activities receiving financial aid--regardless of settings--are covered by Title IX. An example is the Agriculture Extension Service--an informal educational program which includes 4-H Clubs--which the Agriculture Department has decided is covered by Title IX.[7] Cultural grant programs involving theater, art, dance groups

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[3]Letter from Attorney General Edward Levi to HEW Secretary, David Mathews, July 20, 1976.

[4]45 C.F.R. 86.2(g).

[5]45 C.F.R. 86.1.

[6]U.S. Civil Rights Commission, The Federal Civil Rights Enforcement Effort: To Extend Federal Financial Assistance (Vol. VI), pp. 39-40 (1975).

[7]Agriculture Department, Advisory Opinion re Applicability of Title IX of Education Amendments of 1972 to 4-H Programs, April 14, 1977.

and museum programs may also be covered, but there has been no definitive ruling thus far. Job training programs also are covered by Title IX. The Veterans' Administration has ruled that all of its apprenticeship and on-the-job training programs are subject to Title IX.[8]

Research grant and contract programs in which institutions of higher education are the recipients are covered by Title IX. For example, the Agriculture Department has concluded that its research grant programs administered by the Cooperative State Research Service are covered by Title IX where the grantees are educational institutions.[9] Significantly, HEW has taken the position that all of an institution's programs are covered rather than just those activities receiving direct Federal assistance.

Hence, the definition of "educational" program or activity is broad and a variety of programs are covered by Title IX. It is instructive, however, to compare the scope of Title IX's coverage with that of Title VI of the 1964 Civil Rights Act.[10] The latter act prohibits discrimination on the basis of race, color or national origin in all programs and activities receiving Federal financial assistance. Title VI has not been amended by Congress to include sex discrimination, partly because of fears that a serious attempt to amend Title VI would result in weakening amendments by conservatives. Thus, an alternative course of action has been pursued: specific anti-sex discrimination provisions have been added to various grant authorization statutes as they have come up for renewal. The result is a patch-work quilt of laws prohibiting sex discrimination in some, but not all, grant programs.

Much of the language of Title IX is modeled after that of Title VI. For example, the sections on the responsibilities of Federal agencies to enforce the law and the sanctions for noncompliance are identical. If a grantee does not comply with the law, the Federal agency may delay awards of money, revoke current awards or debar institutions from eligibility for future awards, or ask the Justice Department to bring suit.

There are other differences between Title IX and Title VI. Title IX as interpreted by HEW covers employment in education programs and activities. Title VI covers employment only where the primary objective of the Federal financial assistance is to provide employment, or where discriminatory employment practices affect beneficiaries of the assisted program. Also, Title IX--unlike Title VI--has several statutory exemptions. The most important involve exemptions for military schools, admissions to private undergraduate colleges and public single sex undergraduate institutions and a partial exemption for religious schools. There are also several minor exemptions for various activities such as certain youth service groups and mother-daughter and father-son activities.

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[8] Veterans' Administration, Advisory Opinion re Applicability of Title IX to Apprenticeship and On-the-job Training Programs, May 19, 1976.

[9] Agriculture Department, Advisory Opinion re Applicability of Title IX of Education Amendments of 1972 to the Cooperative State Research Service, May 18, 1977.

[10] 42 USC 2000d-2000d-4.

## OVERVIEW OF FEDERAL OUTLAYS FOR EDUCATION AND TRAINING BY AGENCIES OTHER THAN HEW

The Office of Management and Budget publishes yearly special budget analyses of Federal education programs and Federal training and employment programs. The following are figures excerpted from the 1978 budget analyses.

TABLE 1[11]

Federal Outlays for Programs Which are Primarily Educational by Levels

| | Outlays (millions $), 1978 est. |
|---|---|
| **Elementary and secondary** | |
| Bureau of Indian Affairs (Interior Dept.)* | 199 |
| Other | 40 |
| | 239 |
| **Higher Education** | |
| National Science Foundation | 54 |
| Other | 53 |
| | 107 |
| **Adult and continuing education** | |
| Library of Congress | 170 |
| Other | 45 |
| | 215 |
| **Other** | |
| Smithsonian Institution | 60 |
| National Foundation on Arts & Humanities | 30 |
| Other | 150 |
| | 240 |
| TOTAL | 801 |

TABLE 2[12]

Federal Outlays for Educational Support for Other Purposes by Level

| | Outlays (millions $), 1978 est. |
|---|---|
| **Elementary and secondary** | |
| Child nutrition (Agric. Dept.) | 2,172 |
| Forest Service (Agric. Dept.) | 65 |
| Community planning and development | 35 |
| Veterans' readjustment (GI bill) | 84 |
| Other | 90 |
| | 2,446 |

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11 Office of Management and Budget, Special Analyses of the U.S. Government Budget Fiscal Year 1978, p. 175.

12 Id., p. 177

Table 2 (Continued)

| | Outlays (millions $), 1978 est. |
|---|---|
| **Higher education** | |
| Veterans readjustment | 2,573 |
| Reserve Officers Training Corps* | 214 |
| Other | 95 |
| | 2,882 |
| **Adult and continuing education** | |
| Agriculture extension service | 240 |
| Veterans readjustment | 471 |
| Other | 137 |
| | 848 |
| **Other** | |
| State Department | 37 |
| International development assistance* | 72 |
| Other | 125 |
| | 234 |
| TOTAL | 6,410 |

*Indicates that program may not be covered by Title IX

Table 3[13]

Federal Outlays for Education Personnel Training and Research in Education

| | Outlays (millions $), 1978 est. |
|---|---|
| **Personnel training** | |
| National Science Foundation | 8 |
| Other | 54 |
| | 62 |
| **Education Research** | |
| National Foundation on Arts and Humanities | 33 |
| National Science Foundation | 39 |
| Other | 15 |
| | 87 |
| TOTAL | 149 |

COMBINED TOTAL FOR TABLES 1-3: 7,360

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[13] Id., p. 178. Total for personnel training constitutes 27% of training funds. Total for research constitutes 15% of research funds. HEW accounts for remainders.

TABLE 4[14]

Federal Outlays for On-the-Job Training

| | Outlays (millions $), 1978 est. |
|---|---|
| Employment and training assistance | 185 |
| WIN | 91 |
| On-the-job training for veterans | 135 |
| Other | 41 |
| TOTAL | 452 |

TABLE 5[15]

Federal Outlays for Institutional Training

| | Outlays (millions $), 1978 est. |
|---|---|
| Employment and training assistance | 875 |
| WIN | 42 |
| Social services training | 800 |
| Other | 66 |
| TOTAL | 1,783 |

COMBINED TOTAL FOR TABLES 4 AND 5: 2,235

Tables 1 through 5 above show that approximately $9.6 billion is spent by the Federal agencies other than HEW for education and training programs which are subject to Title IX. That figure, however, excludes research grants for non-educational topics which are received by institutions of higher education. As previously indicated, such research grants are probably subject to Title IX. No special analysis of research spending is compiled by the Office of Management and Budget; consequently no budget figure is readily available.

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14 Id., p. 194.

15 Id., p. 195. Institutional training provides instruction in vocational skills and job related remedial education in a classroom setting. The "other" category includes programs for Indians, prisoners preparing for employment after release, and others. "Social services training" includes programs operated by state agencies for welfare recipients.

This report includes lists of education and training grant programs administered by various Federal agencies. These lists were derived from a review of program descriptions in the 1977 Catalog of Federal Domestic Assistance published by the Office of Management and Budget. The lists include programs which have educational or training components and research grants (for whatever purpose) to institutions of higher education. HEW has taken the position that all educational institutions receiving Federal assistance are covered by Title IX. Budget figures from the Catalog--"grants" for fiscal year 1977--are misleading in some cases because only part of a program is educational. Such programs are starred(*). The Catalog does not include amounts spent on Federal contracts to institutions of higher education, and to that extent budget totals for agencies are understated.

## SUMMARY OF MAJOR FINDINGS

The 20 Federal agencies surveyed may be divided in two categories: (1) agencies subject only to Title IX, and (2) agencies subject to coverage of all (or nearly all) of their programs by both Title IX and other anti-sex discrimination provisions. (See the summary table on the latter category at page 38.)

The survey resulted in three major findings:

(1) Of the agencies having education/training programs subject only to Title IX, none has published Title IX regulations although the law is more than five years old.

(2) Of the agencies with double coverage of their programs, most were unaware of the applicability of Title IX or of the need for intragovernmental coordination of standards and enforcement. There are no Title IX "delegation agreements" between agencies, although numerous Title VI delegation agreements exist. (A "delegation agreement" is a means of intragovernmental coordination whereby one agency delegates its enforcement duties to another agency but retains legal responsibility for ensuring non-discrimination in its programs.)

(3) There is no lead agency designated by Executive Order to coordinate enforcement of Title IX and the other sex discrimination provisions. This is a major reason why Title IX has not been enforced by those agencies subject only to Title IX. The other agencies--subject to both Title IX and other sex discrimination provisions--have failed to focus specific attention on Title IX enforcement.

## II. AGENCIES HAVING UNUSUAL ROLES IN RELATION TO TITLE IX ENFORCEMENT

### THE JUSTICE DEPARTMENT--FEDERAL PROGRAMS SECTION

There are two major reasons to coordinate enforcement. Since recipients (e.g. universities) frequently are assisted by a number of Federal agencies, coordination and direction are necessary to ensure joint enforcement without subjecting recipients to conflicting reporting requirements, compliance standards, interpretations of law or duplicative compliance reviews or investigations. Equally important is the need to ensure uniform enforcement by all agencies, lest inconsistency of enforcement effort undermine the Federal government's credibility with grantees and beneficiaries.

What can be accomplished by an Executive Order providing for intragovernmental coordination of civil rights enforcement is illustrated by the Title VI, Executive Order 11764. Under this order (and preceding ones), the Attorney General has been solely responsible for coordinating the efforts of more than 25 Federal agencies with Title VI responsibilities. The coordination function is performed by the Federal Programs Section of the Civil Rights Division of the Justice Department.[16] By the terms of Executive Order 11764, the Attorney General's powers extend beyond mere "coordination": standards and procedures, rules and regulations are prescribed for implementation of Title VI. Federal agencies are mandated to "cooperate" with the Attorney General and to conduct compliance reviews and investigations in accord with these standards.

On December 1, 1976, the Justice Department published a final regulation setting forth minimum requirements for implementation of Title VI by Federal agencies.[17] The regulation requires in part that agencies subject to Title VI publish the Title VI regulation, appendices listing the grant programs which are covered, and guidelines providing detailed information on the Title VI requirements. Also, agencies must establish data collection requirements to permit effective enforcement, and procedures to determine compliance by applicants for Federal assistance and by grantees. The publication of the Justice Department regulation has caused a great flurry of activity by some Federal agencies which had never issued a Title VI regulation and by other agencies which are now revising their Title VI regulation and issuing guidelines. To assist the agencies, the Federal Programs Section sponsored a four day Title VI conference in September 1977 to discuss implementation of the December 1st regulation. This conference was the first ever sponsored on Title VI by the Justice Department.

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[16]For an analysis of the performance of the Justice Department, see supra note 6, pp. 645-755.

[17]28 C.F.R. Part 42, Subpart F.

Before the December 1st regulation was issued, the Justice Department considered its legal authority to include Title IX and the other anti-sex discrimination provisions under the regulation. The Federal Programs Section concluded that it lacked the necessary authority.[18] Whatever the legal technicalities, the practical effect of this decision is most unfortunate. Enforcement of prohibitions against discrimination because of sex, race, color and national origin are equally in need of improvement. The numerous provisions in authorization statutes have, in effect, amended Title VI to include sex. A unique opportunity to deal comprehensively with all forms of discrimination has been lost.

Also distressing is the failure of the Justice Department to address its lack of legal authority and the lack of coordination of enforcement of the anti-sex discrimination statutes. The Justice Department was well aware of the problem long before it issued the December 1976 regulation. On May 14, 1973, the U.S. Commission on Civil Rights recommended to the Justice Department that measures be taken to prohibit Federal grantees from discriminating on the basis of sex in the distribution of Federal assistance.[19] In November 1975, the Commission wrote to the President recommending that he issue Executive Orders prohibiting sex discrimination in all Federal assisted programs and assigning responsibility for coordinating and directing Federal agency enforcement.[20] But no action was taken to ensure effective coordination and enforcement of Title IX and the other provisions.

President Ford instead directed the Justice Department on July 1, 1976, to review the entire U.S. Code to determine the need for revising sex-based provisions which should be eliminated before the Equal Rights Amendments is ratified. Consequently, the Justice Department established a small Sex Discrimination Taskforce.[21] As a tangent to its task, it has recently started to examine the need to amend Title VI by Executive Order or legislation and to coordinate enforcement of anti-sex discrimination laws. On August 26, 1977, President Carter sent a memorandum to the heads of departments and agencies asking that they cooperate with the Attorney General's Taskforce and initiate a comprehensive review of all their programs in order to identify any regulations, guidelines or policies which discriminate on the basis of sex. The memorandum made no specific mention of the need for coordination of enforcement of Title IX and other anti-sex discrimination provisions already enacted.[22]

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[18]Telephone interview with Mary Planty, Deputy Director of Federal Programs Section of Justice Department, August 30, 1977

[19]U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--To Preserve, Protect, and Defend the Constitution, Vol. VII, (June 1977), p. 16 n. 155.

[20]Id., p. 60.

[21]It was nearly abolished before it had even made much headway in its task; President Ford's budget for FY 1978 provided no money for it. Fortunately, after the Carter administration took office, Taskforce funding was restored.

[22]President Jimmy Carter, August 26, 1977 Memorandum for the Heads of Executive Departments and Agencies.

THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Although this report focuses on what agencies other than HEW are doing to enforce Title IX, HEW's role as de facto lead agency must be discussed. On July 27, 1972, J. Stanley Pottinger, then Director of the Office for Civil Rights in HEW, wrote a letter to Frank Carlucci, Deputy Director of the Office of Management and Budget (OMB). Pottinger pointed out the need for coordination among agencies involved in writing Title IX regulations and guidelines and the need for an Executive Order or other directive to coordinate enforcement. He requested that OMB at least designate HEW as the agency responsible for "coordinating the development of uniform regulations" and that later, the function of coordinating enforcement should be given to HEW, "since the vast majority of education sex discrimination problems will be enforced in this office."

Carlucci replied by letter on August 28, 1972, stating that HEW should "take the lead in the development of uniform regulations. This should be done, as you suggest, in conjunction with the other agencies having Title IX responsibility."

Subsequently, HEW took two years to develop a proposed Title IX regulation for its own education programs and another year before it published the final regulation on June 4, 1975. This delay in publishing a final regulation provided other Federal agencies a convenient excuse for not taking any action. This failure of agencies to take the preliminary step of determining which of their programs are covered by Title IX--something most of them still have not done (as of September 1977)--epitomizes a lack of commitment to ending sex discrimination.

Exactly what action HEW took from 1972 to 1975 to implement the OMB mandate is unclear.[23] At a minimum, HEW should have done four things: (1) notified all agencies of their Title IX responsibilities and suggested that they determine which of their programs are covered by Title IX; (2) (in June 1974, when HEW's proposed Title IX regulation was issued) requested that agencies begin to determine if any modifications of the regulations were needed for their programs; (3) begun negotiations with the agencies for Title IX delegation agreements in the areas of elementary, secondary and higher education; and (4) urged prompt adoption of HEW's Title IX regulation (issued in June 1975) with any needed modifications. None of the above was done.

HEW did have some discussions with the Veteran's Administration (VA) and the Law Enforcement Assistance Administraton (LEAA). The contacts with VA over a period of five years were sporadic and ineffective in spurring VA action. The following is a summary of those contacts documented by memoranda in VA's files.

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[23] Talks with several officials within the Office for Civil Rights produced no information. In fact, the new deputy director of OCR with special responsibility for Title IX was unaware that HEW lacks lead agency status for coordinating enforcement.

HEW wrote to VA on September 22, 1972, regarding the need to develop uniform Title IX regulations. Within VA, it was agreed that the Chief Benefits Director and the General Counsel's Office would work with HEW, but HEW never followed up. On July 25, 1973, HEW held a meeting with VA on the need for a Title IX delegation agreement. No agreement was reached. VA indicated it had insufficient staff to enforce Title IX; HEW suggested that VA do a written evaluation of its staffing and send it to HEW. VA decided that it would wait to take any action until HEW had published the Title IX regulation.

In February, 1974, HEW sent VA a questionnaire, apparently designed for its own regional offices, regarding priorities for enforcement of various civil rights laws including Title IX. VA replied that it had no Title IX program yet but was waiting for guidance from HEW in the form of the draft Title IX regulation. HEW never responded to this request. When HEW's proposed regulation was published in June 1974, VA neither submitted comments nor studied what modifications to the HEW regulation might be necessary for VA programs.

In June 1975, HEW sent VA a copy of the final regulation, a letter stating that the regulation was suitable for adoption by other agencies and a request for VA's comments. On June 25, 1975, VA responded that the regulation would be appropriate with minor modifications. There were no further contacts between HEW and VA until July, 1976, when a VA equal opportunity staffer sought guidance from the Office for Civil Rights in drafting VA's Title IX regulation. As of September, 1977, VA had not yet published its Title IX regulation, although a draft regulation was submitted to the General Counsel's Office by the Equal Opportunity Staff, Veterans Assistance Service, in June.[24]

HEW's conduct regarding LEAA was inconsistent. Early in 1974, LEAA informed HEW of its desire to amend the extant Title VI delegation agreement to include Title IX in the area of higher education. A draft delegation agreement was worked out between the two agencies at the level of the general counsel's offices. The agreement was then submitted to Attorney General Levi for approval, which was given on November 13, 1975. However, HEW Secretary Mathews wrote to Attorney General Levi on June 8, 1976, rejecting the draft delegation agreement because there was no Executive Order designating HEW as the coordinating agency for Title IX enforcement.[25] Despite the letter from OMB (referred to earlier) stating that HEW should take the lead, and although an Executive Order is not a prerequisite for a valid delegation agreement between agencies, and despite the fact that HEW had sought earlier to effect a delegation agreement with VA, HEW refused to act.

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[24]Telephone interviews on September 23 and October 13, 1977, with Wanda Johnson, Equal Opportunity Specialist, Veterans Assistance Service in Department of Veterans Benefits, based on her review of VA's files.

[25]Telephone interview with Bill Kummings, staffer in Office of Civil Rights Compliance, LEAA, September 29, 1977.



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Subsequent to Pottinger's July, 1972 letter to OMB seeking some authority for HEW to take the lead in the development of uniform Title IX regulations, HEW has never raised with OMB or Justice the need for an Executive Order designating itself or another agency as the coordinating agency for Title IX enforcement. Yet in a July 6, 1977 letter, HEW stated:

> The department is not authorized to promulgate or require the promulgation of regulations under Title IX for any other agency. Although we would welcome government-wide coordinated enforcement responsibilities under Title IX, no such authorization has yet been provided. Thus, while it is our view that to the extent the National Endowment for the Arts and Humanities provides assistance for educational programs it is required to issue Title IX regulations, we lack any type of authority or control over that matter.[26]

Apparently, HEW either ignored its 1972 mandate from OMB or viewed it as completed when it issued the final Title IX regulation in June, 1975.

To date, HEW has not negotiated a single Title IX delegation agreement with any agency,[27] although institutions of higher education which receive HEW money also frequently receive funds from other Federal agencies. In addition, HEW has not studied the need to improve its extant Title VI delegation agreements,[28] although the Justice Department's Federal Programs Section urged it to do so on June 17, 1976. The Justice Department conducted a survey to determine the effectiveness of existing agreements and found some serious problems relating to HEW's performance of its delegated responsibilities and lack of accountability to the delegating agencies.[29]

## THE OFFICE OF MANAGEMENT AND BUDGET

Although OMB administers no educational grant programs of its own, it nevertheless can play a major role in the potential resolution of the problem of interdepartmental coordination of Title IX enforcement. OMB has the unique

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[26]July 6, 1977 letter from Albert Hamlin, Assistant General Counsel, Civil Rights Division, HEW to the Women's Equity Action League--and WEAL Legal Defense and Education Fund..

[27]Telephone interview with John Hope, Acting Diector, Office of Governmental Relations, Office for Civil Rights, HEW, on September 14, 1977.

[28]ID.

[29]Federal Programs Section, Title VI Forum, fall 1976, pp. 3 and 6.

function of managing the executive branch and assisting the President in making budget allocations for Federal agencies. OMB supervises the preparation and implementation of the Federal budget, approves funding and personnel levels--including those for civil rights enforcement--for all executive agencies, and directs agencies to conduct efficiency evaluations. In addition, it exercises clearance power over all Administration-proposed legislation and Executive Orders, supervises Governmental statistical activites--including compilation of civil rights data--and has responsibility for interdepartmental coordination and resolution of cross-cutting issues.

Title IX enforcement by Federal agencies is certainly one of those cross-cutting issues. After giving HEW a mandate in August 1972 to take the lead in the development of uniform Title IX regulations in conjunction with other Federal agencies, OMB failed to monitor HEW's performance or to detect HEW's eventual repudiation of its responsibility. It did not press for an Executive Order clearly designating a lead agency for Title IX enforcement once HEW's "model" regulation had been issued. Furthermore, OMB did not take up the problem after the only other potentially interested agency--Justice Department, Federal Programs Section--disclaimed Title IX coordination responsibility.

In May, 1975, the U.S. Commission on Civil Rights discussed OMB's mandate to HEW with officials representing both. It informed OMB of the discrepancy between its mandate and HEW's interpretation of it.[30]

In November, 1975, when it issued Volume VI of its enforcement report, the U.S. Commission on Civil Rights informed OMB of the need for an Executive Order coordinating the enforcement of Title IX and other sex discrimination prohibitions. The report recommended that OMB be given responsibility by Executive Order to coordinate and direct Government-wide enforcement of a proposed Executive Order prohibiting sex discrimination in all Federal financial assistance programs.[31]

OMB has not acted on any of these recommendations. In December 1976 it circulated for comment a draft bill, the Anti-discrimination Act of 1976, which prohibited sex discrimination in all Federally assisted programs, but the draft was not adopted by the Administration. In May, 1977, OMB formed a Taskforce on Civil Rights Reorganization, chaired by Howard Glickstein. Its initial task was to study options for reorganizing agencies responsible for enforcing equal employment opportunity. After completion of the report late in 1977, the Taskforce is to examine Title VI enforcement.[32] Whether sex discrimination will be included is unclear as of September 1977.

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[30] Volume VI of Federal Civil Rights Enforcement Effort, supra note 6, p. 41.

[31] Id., pp. 804-806.

[32] Telephone interview with Ted Haybart, OMB Taskforce on Civil Rights Reorganization, August 31, 1977.

In June 1977, the U.S. Commission on Civil Rights published a report on Federal civil rights efforts in the area of policymaking and included a chapter on OMB.[33] OMB's budget review process, supervision of data collection and Circular A-95 process were examined.

OMB's budget review process involves all Federal agencies. Consultation between OMB staff and top officials of each agency focuses on major program goals in relation to the proposed budget. Review of civil rights goals has been included only sporadically. For example, in May 1975 Director James Lynn responded to pressure from the Interdepartmental Taskforce of the National Commission on the Observance of International Women's Year by issuing a directive to budget examiners to take a critical look (as an integral part of OMB's ongoing activities) at involvement of women in agency programs and to call to the attention of the Director any negative impacts on women.[34] However, the Commission on Civil Rights found that most budget examiners have failed to inquire about sex discrimination problems in agency programs, e.g. the failure of VA and Agriculture Department to issue Title IX regulations.[35]

The Commission also found that while budget examiners frequently have contact with industry representatives, few have contact with women's rights organizations. The Education Branch Chief of the Human Resources Division and Budget Examiner for Higher Education are in key positions for oversight of Title IX, but they have virtually no contact with women's groups.[36] Budget examiners in other divisions also theoretically exercise oversight of Title IX enforcement by other Federal agencies but have done little.[37]

OMB's Circular A-11 which provides instructions and formats for agency budget submissions is an important means of obtaining information for OMB's budget hearings and for the publication in the President's budget of the Special Analyses. The Circular includes instructions for reporting civil rights activities: Justice Department, as lead agency for Title VI, is responsible for collecting and checking the accuracy of data from individual agencies. All agencies with civil rights activities for which there is no lead agency should submit a narrative statement, budget and beneficiary information.[38] However, agencies other than HEW have never submitted data on Title IX

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[33]Volume VII, The Federal Civil Rights Enforcement, supra note 19, pp. 78-123.

[34]Id., p. 82.

[35]Id., 99.

[36]Id., p. 95 n. 156.

[37]As of September 1, 1977, these OMB divisions are the following: National Security Division--covers Defense Department; Community and Veterans Affairs Division--covers HUD, VA, Action; Economics and General Government Division--covers Commerce, Transportation, Treasury Departments; Natural Resources Division--covers Interior Department and EPA; Energy, Food and Analysis Division--covers Agriculture and Interior Departments; Science, Space, and Energy Technology Division--covers National Science Foundation and Smithsonian.

[38]OMB, Circular A-11, June 29, 1977, pp. 121-122 and Exhibit 53.

enforcement.[39] The instructions on civil rights do not specifically inform agencies that reporting on Title IX enforcement is required if they have any educational grant programs. The instructions for reporting on education and related programs and on Federal training programs contain no cross reference whatsoever to Title IX. OMB does not require that the civil rights data be submitted by agencies prior to substantive review of their budgets.[40]

OMB's failure to exercise oversight of Title IX enforcement is reflected in inaccurate statements in its FY 1978 Special Analyses of Federal Civil Rights Activities, which is compiled from the civil rights data required by Circular A-11. The scope of coverage of Title IX is misstated by omitting the fact that Title IX applies to elementary and secondary schools and other education or training programs conducted by agencies other than HEW:

> Title IX of the Higher Education Amendments of 1972 charged the Department of Health, Education, and Welfare with the responsibility of insuring nondiscrimination on the basis of sex in some 2850 institutions of higher education throughout the U.S. In 1978 the Department expects approximately 475 complaints will be investigated.[41]

OMB has responsibility for assessing the statistical needs of agencies and coordinating the collection of racial/ethnic data, cross-tabulated by sex, of beneficiaries of Federal grant programs.[41A] Such information is necessary to develop a statistical measure of discrimination and to enforce Title IX and other civil rights laws adequately. The Commission on Civil Rights found that such statistics frequently are not available or are not collected by agencies. Although OMB has conducted several studies on the subject, it has not implemented the various recommendations to compile such statistics systematically.[42]

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[39] Telephone interview with Adrian Quinnavel, Human Resources Division, OMB, on September 7, 1977.

[40] Volume VII, Federal Civil Rights Enforcement Effort, p. 93.

[41] Office of Management and Budget, The Special Analyses of the Budget of the U.S., FY 1978, p. 247. A similar error appears in the FY 1979 Special Analyses.

[41A] The resolutions adopted by the National Women's Conference in Houston, November 18-21, 1977, included one on statistics which stated in part: "The OMB should require all departments and agencies to collect, tabulate and analyze data relating to persons on the basis of sex in order to assess the impact of their programs on women."

[42] Volume VII, Federal Civil Rights Enforcement Effort, pp. 105 and 189.

OMB has responsibility for policy oversight of Circular A-95 and for assisting agencies to implement its requirements. The Circular establishes a system for coordinating Federally assisted programs with state, regional and local programs and plans. Program applicants are required to notify established state clearinghouses of their intent to apply for Federal assistance. The clearinghouses then have the opportunity to review the project application and comment on it, including its civil rights impact. One of the purposes of the A-95 process is to avoid supporting discriminatory programs. The Commission on Civil Rights found that the Circular omits women as a population group to be protected from discrimination and that present mechanisms are inadequate to secure civil rights comments from state and local civil rights agencies.[43]

## THE INTERNAL REVENUE SERVICE, TREASURY DEPARTMENT

While IRS does not give grants, it does recognize certain organizations--including non-profit private schools--which are "organized and operated exclusively for religious, charitable,. . . or educational purposes" (Internal Revenue Code Section 501(c)(3)) as exempt from Federal income tax. The Internal Revenue Code also allows donors to such tax-exempt schools to deduct their contributions from their income taxes. These deductions create an incentive for prospective donors and are significant to private schools. The IRS tax exemption letter sent to qualifying private schools makes available other Federal tax benefits such as exemptions from some excise and employment taxes. Other benefits may include exemption from state income and property taxes and reduced mailing costs. In a January 1975 report, the Commission on Civil Rights asserted that the Federal income tax exemption and the charitable deduction are forms of "Federal financial assistance" under both Title VI and Title IX, according to a line of court cases, and that IRS should enforce both laws where private non-profit schools are concerned.[44]

IRS has taken the position that tax exemptions and charitable deductions are not "Federal financial assistance" as that term is defined in Title VI and that IRS is not a Title VI agency under the coordination authority of the Justice Department. However, IRS does have a civil rights policy with regard to private schools which is contained in Revenue Ruling 71-447. The ruling was published after a court suit was filed in 1970 challenging the tax exemptions granted by IRS to private, racially-segregated academies in the South. Revenue Ruling 71-447 states that a private, non-profit school (elementary, secondary, postsecondary) must have a racially non-discriminatory policy for admission and for all programs and activities in order to qualify for tax exemption. Revenue Ruling 75-231 extends the policy to church-related schools. According to IRS the position announced in Revenue Ruling 71-447 is based on the broad

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[43] Id., pp. 118 and 120.

[44] U.S. Civil Rights Commission, Federal Civil Rights Enforcement Effort: To Ensure Equal Educational Opportunity, Volume III, January 1975, pp. 142-194, 363-366, 387-389.

national policy against race discrimination in education announced in Brown v. Board of Education, 347 U.S. 483, 500 (1954) and the Civil Rights Act of 1964. Revenue Procedure 75-50 sets forth guidelines and recordkeeping requirements under the Ruling and defines prohibited discrimination to include discrimination on the basis of ethnic origin.

The Commission on Civil Rights recommended in its 1975 report that IRS amend its revenue ruling to cover sex discrimination in private schools and issue regulations defining the duties of all exempt private schools, because there is now a broad national policy against sex discrimination in education as evidenced by Title IX.

The IRS has not followed the recommendations of the Commission, principally because it believes that a broad national policy against sex discrimination similar to that against racial discrimination has not developed. There have been no cases of sex discrimination alleged against private tax exempt schools that have been brought to the attention of IRS.[45]

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45 Telephone interviews on September 9, 1977 with Sarah Garrett, Office of Chief Counsel in Treasury, Milton Cerny, Assistant Branch Chief, Exempt Organizations Examination, Technical Branch. Confirmed in writing January 23, 1978.

## III. AGENCIES WITH ALL OF THEIR EDUCATION PROGRAMS SUBJECT ONLY TO TITLE IX

### AGRICULTURE DEPARTMENT (U.S.D.A.)

The Agriculture Department administers a broad range of educational grant programs and research programs in which universities are the primary recipients. All of these programs appear to be subject only to Title IX (i.e., there is no double coverage under other anti-sex discrimination provisions). The one exception is the Youth Conservation Corps which is run jointly with the Interior Department and which has a sex discrimination prohibition in its authorization statute. The following grant programs appear to be covered:

| GRANT PROGRAMS | FY 1977 Obligations ($ Millions) |
|---|---|
| * 1. Cooperative Extension Service | 199.2 |
| * 2. Grants for Scientific Research | 17.9 |
| * 3. Cooperative Forestry Research | 8.2 |
| * 4. Payments to Agriculture Experiment Stations | 94.8 |
| * 5. Rural Development Research | 1.4 |
| 6. Research Cooperative Aid | 5.8 |
| 7. Forestry Research | 1.5 |
| 8. Youth Conservation Corps | 9.6 |
| 9. Agriculture Research--Basic and Applied | .3 |
| 10. School Milk Program | 154.0 |
| 11. School Lunch Program | 1751.0 |
| 12. School Breakfast Program | 184.0 |
| 13. Child Care Food Program | 120.0 |
| 14. Nonfood Assistance for School Food Service Programs | 28.0 |
| | 2547.7 |

The General Counsel's Office has decided that the starred programs probably are covered by Title IX.

Several units and officials within the Agriculture Department have responsibility for Title IX policy and enforcement. The Office of General Counsel under Sarah Weddington serves as advisor when regulations are written or when non-compliance is suspected. The Assistant Secretary for Administration, Dr. Joan Wallace, is responsible for setting civil rights policies for the Department and for oversight of the Office of Equal Opportunity. That office is responsible for compliance reviews and investigation of civil rights complaints against Agriculture Department programs. In October, 1977, a new Food and Agriculture Science and Education Administration was created to coordinate the research and education activities of the Department. It includes the Extension Service, which has a Director of Civil Rights Compliance, the Cooperative State Research Service, and the Agricultural Research Service.

The Department has not decided whether to seek a delegation agreement for Title IX with HEW in the areas of elementary, secondary and higher education. USDA had a Title VI delegation agreement in 1967 which was rescinded in 1969 because of restrictive appropriations language. The language was later repealed but USDA did not renew the delegation because HEW had never reviewed the Agriculture programs during life of the agreement. Consequently, in the last several years, the Department has instituted its own reviews of State Agricultural Experiment Stations.[46] It is currently reviewing the matter of a Title VI delegation, as required by the Department of Justice; the final determination will include Title IX as well as Title VI.

The Agriculture Department's current position is that Title IX applies to at least some of its educational programs. It recently began drafting a list of all the programs covered and soliciting internal Department comment on the suitability of adopting HEW's Title IX regulation.

The process by which the Agriculture Department finally has decided that Title IX applies to some of its programs is instructive. In March 1975, the Office of Equal Opportunity proposed to the top officials of the Department that a regulation prohibiting sex discrimination in all of the USDA financial assistance programs be adopted. In a background memorandum, the Office argued that the regulation was needed for uniform enforcement with Title VI. It stated that sufficient legal authority for the regulation exists in the

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46 Telephone interview on August 30, 1977 with Richard Peer, Chief of Compliance and Enforcement Division, Office of Equal Opportunity, Agriculture Department, amended by letter from the Secretary of Agriculture, January, 1978.

statute providing broad authority to the Secretary.[47] While this proposal was still under consideration, the Commission on Civil Rights interviewed several officials in the Office of Equal Opportunity and the Extension Service, questioning USDA's failure to determine the extent of Title IX's applicability.

In November 1975, the Commission published its report on the Extension Service as part of Volume VI. The report noted the position of Sean Doherty in the General Counsel's Office. He argued that Title IX probably was not applicable to Extension Service programs because those programs are "informal", i.e. the programs are conducted outside of schools by county civil servants; enrollment as formal students at an educational institution is not a prerequisite for participation; and Extension Service funds may not be used for college course teaching. Doherty also stated that USDA was waiting for HEW to issue a final regulation before taking any action. The report noted the official reaction of USDA to the Commission's recommendation that Title IX be enforced:

> The Commission has arrived at a conclusion that has not been firmly established by law. Until that determination has been made, such conclusions in a public document, paraded as fact, should not be permitted.[48]

On November 7, 1975, the Office of Equal Opportunity forwarded to the Office of General Counsel a list of grant programs which it thought probably were covered by Title IX and requested a legal determination of Title IX's applicability. No response was forthcoming.

On September 1, 1976, the Office of General Counsel turned down the proposal by the Office of Equal Opportunity to issue a comprehensive anti-sex discrimination regulation. The Justice Department advised that there was insufficient legal authority for such a regulation.[49] But the General Counsel's Office apparently failed to consider the less comprehensive alternative for which there was sufficient legal authority--Title IX.

On January 7, 1977, when Sean Doherty was asked what the Department was doing to enforce Title IX, he replied that the issue of Title IX's applicability was undecided. (However, in January, 1978, the Department stated that it is developing a proposed Title IX regulation which is to be published in the Federal Register in the near future.)[50]

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47 Volume VI, Federal Civil Rights Enforcement Effort, supra, note 6, p. 37.

48 Id., pp. 39 and 41.

49 Telephone interview on August 30th and September 6, 1977, with William Payne, Office of Equal Opportunity.

50 Letter from Secretary of Agriculture to NACWEP, January 1978.

What apparently sparked some action on Title IX was a sex discrimination complaint filed by a member of the National Organization for Women, in a March 6, 1977 letter. She complained that sex-segregated car rodeo competitions sponsored by the 4-H (which is funded by the Extension Service) violated Title IX. The Acting Administrator of the Extension Service, requested on March 23, 1977, that the General Counsel's Office determine the applicability of Title IX. An opinion memorandum signed by the Director of Research and Operations Division was issued on April 14, 1977, holding that Title IX does apply to the 4-H program, that sex segregated contests are inconsistent with the intent of Title IX, and that, until USDA issues a Title IX regulation, USDA should use HEW's Title IX regulation as a guide.[51]

On May 18, 1977, the General Counsel's Office issued another opinion memorandum in response to a request from the Administrator of the Cooperative State Research Service for a determination of Title IX's applicability to its research programs. The opinion states that Title IX applies to USDA research programs which have some connection with educational institutions, faculty or students.[52]

Any Federal agency with Title VI and Title IX responsibilities should have a system of collecting data on the race and ethnic origin, cross-tabulated by sex, of those eligible to participate, applicants and beneficiaries. The Commission on Civil Rights noted in its November 1975 report that the biggest deficiency of USDA's data system is its failure to collect data on the basis of sex.[53] This failure has not been rectified since the report was published.[54]

Since 1968, the Extension Service[55] has had a regulation (7 CFR 18.1 et seq ) prohibiting employment discrimination on the basis of sex (as well as race, national origin and religion) in its programs. Each grant recipient is required to submit an equal employment opportunity program. Land grant universities which are sponsors of Extension Service programs were historically part of a segregated system of education, and serious problems remain. The Commission on Civil Rights found in 1975 that the Extension Service had not taken effective

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51 Supra, note 7.

52 Supra, note 9.

53 Volume VI, Federal Civil Rights Enforcement Effort, Supra note 6. p. 54.

54 Supra, note 49.

55 For more in depth analysis, see National Advisory Counsel on Women's Educational Programs, The Educational Needs of Rural Women and Girls, January 1977, pp. 58-67.

action to require recipients to comply.[56] Two years later, relatively little progress has been made in effective enforcement of the ban on sex discrimination in employment.[57]

In responding to this draft report, USDA expressed concern that agencies are not funded to implement their civil rights enforcement responsibilities.[58]

DEFENSE DEPARTMENT (DOD)

The Defense Department spends large sums of money for education and training of military and civilian personnel. However, most of that spending is not subject to Title IX since it is direct Federal expenditures. Military service academies are exempted from Title IX.[59]

There are only a few DOD programs which appear to be covered by Title IX, such as industrial equipment loans to educational institutions ($36.5 million in FY 1977). Some programs run by the Defense Civil Preparedness Agency may be covered by Title IX. DOD maintains that these programs are not subject to Title IX because they are "directly administered by contractors".[60A] However, "Federal financial assistance" has been defined by HEW to include education-related contracts.

The Defense Department has not undertaken a general review of its[60] Title VI programs to determine if Title IX applies to any of them. It is currently in the process of updating its official list of Title VI programs.[60A] It is possible that some programs on the revised list which provides education and training will be found to be subject to Title IX.

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[56]Volume VI, Federal Civil Rights Enforcement Effort, supra note 6, pp. 86-88, 30-32, 65-66.

[57]Telephone interview on August 30, 1977, with Richard Peer, Chief of Compliance and Enforcement Division, Office of Equal Opportunity, USDA.

[58]Supra, note 50.

[59]20 USC 1681(a)(4).

[60]Telephone interview on September 28, 1977 with Carol Frings, Office of General Counsel.

[60A]Letter from Deputy Assistant Secretary for Equal Opportunity, DOD, to NACWEP, January 27, 1978.

Concerning the overseas dependents schools, for which $247 million was spent in FY 1977, [61] the Office of General Counsel determined in December 1974 that Title IX is not applicable, because the concept of "Federal financial assistance" does not extend to money spent by Federal entitites. However, "...the principle of eliminating sex discrimination in education programs as set forth in Title IX should be applied as a matter of policy to all activities of the overseas dependents schools as soon as practicable." [62] The Department now states that "every effort is made to conform to the statute within available financial and manpower resources." [62A]

The Defense Department has also made a determination that the Reserve Officers Training programs on university campuses are not subject to Title IX. The reason given is that the concept of "Federal financial assistance" does not include situations where there is no intermediary recipient of funds. In the case of ROTC, the schools do not select the participants.[63]

A Delaware U.S. District Court has upheld the Navy's sex bias in Senior ROTC scholarships. In Kovach v. Middendorf, 424 F. Supp. 72 (1977), the court held that the sex bias is not unconstitutional, because the power of Congress to maintain the armed services at maximum efficiency--women are prohibited from serving on combat vessels--and minimum cost permits the Navy to favor men over women in awarding the scholarships. However, each of the services increased its percentage of women receiving four-year scholarships between 1975-76 and 1977-78. Despite a decrease in the total number of scholarships, the proportion awarded to women rose from 3.8% to 10.4%, with the Air Force showing the largest increase (from 0.3% to 21.3%). The same minimum Scholastic Aptitude Test scores are required for women and men, but since more women apply than there are vacancies for women, the higher scoring women are selected.

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61 The Budget for FY 1978, supra note 41, p. 178. For a review of how well the money was spent, see "Dependents Schools in Europe", Army Times Magazine, October 18th and November 1, 1976.

62 Memorandum to Dr. Anthony Cardinale, Director, DOD Dependent Schools, from Robert Gilliat, Office of Assistant General Counsel for Manpower, Reserve Affairs, Health and Environment, December 11, 1974, on Application of Domestic Statutory Requirements to the Overseas Dependents Schools.

62A Supra, note 60A

63 June 25, 1976 letter from Stephen Sutton, Director of Precommissioning Programs, Office of Assistant Secretary of Defense for Manpower and Reserve Affairs to Bernice Sandler, Chair of National Advisory Council on Women's Educational Programs.

At the high school level, DOD supports a junior ROTC program, which promotes citizenship but does not provide military training.[64] Girls participate in the program. In both the senior and junior ROTC programs, schools provide some support to the programs in the form of facilities and clerical help. While Title IX may not apply to such programs directly, it is not clear if schools covered by Title IX may provide support to such discriminatory programs.

Principal responsibility for Title IX enforcement within DOD rests with the Deputy Assistant Secretary for Equal Opportunity, who reports to the Assistant Secretary for Manpower, Reserve Affairs and Logistics, who in turn reports directly to the Secretary of Defense. The office is under some pressure to bring its Title VI program into compliance with the Justice Department's minimum standards, but there has been no Title IX activity. The General Counsel for Manpower, Reserve Affairs, etc. has responsibility for reviewing civil rights regulations.

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64
10 USC 2031--junior ROTC; 10 USC 2101-2111--senior ROTC.

GENERAL SERVICES ADMINISTRATION (GSA)

GSA manages the Federal government's property and records, including disposing of property. GSA ascertains if real or personal property is used or surplus and distributes it to other Federal agencies which can then distribute it to States, educational institutions and other grantees. GSA does not keep track of how the other Federal agencies dispose of the property, and no figures are available on the amount or value of the property given to educational institutions. While GSA approves transfers of real property made by HEW, it states that HEW maintains the records on property given for educational use. Recipients of such property are currently required to sign commitments that they will comply with Title VI, but there is no requirement regarding Title IX. GSA has a Title VI, but not a Title IX, delegation agreement with HEW for grantees which are medical facilities, institutions of higher education and elementary and secondary schools.

GSA is under Justice Department pressure to revise its Title VI regulation, but GSA is advocating that other Federal agencies which receive surplus or used property from GSA should have the Title VI responsibility, not GSA.[65]

GSA programs which appear to be subject to Title IX are the following: disposal of Federal surplus real property (may be conveyed for educational purposes at discounts up to 100%), donation of Federal surplus personal property and national historical publications and records grants (universities are the grantees). GSA maintains that HEW has responsibility for Title IX enforcement and does not currently assign such responsibility to any particular component of the agency.[65A]

INTERIOR DEPARTMENT (USDI)

The Interior Department has not considered the applicability of Title IX to any of its programs (other than the Bureau of Indian Affairs). However, in March 1973 USDI promulgated regulations prohibiting sex discrimination in all of its Federally-assisted programs.[66] The legal basis was the Secretary's statutory authority to determine Department policy, and the sex discrimination coverage was added to the Department's Title VI regulation. However, as of September 1977, the sex discrimination regulations have been deleted by USDI upon the strong recommendation of the Justice Department.[67]

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65 Telephone interview on September 23, 1977, with Stanley Valadez, Policy Coordinator in Office of Contract Compliance, GSA.

65A Letter dated January 11, 1978, from GSA Administrator Jay Solomon, responding to draft of this report.

66 43 C.F.R. 17.1 et seq

67 September 9, 1977, Memorandum from Attorney for Equal Opportunity Compliance to Assistant Director for Title VI Compliance, USDI, on Sex Discrimination under Title VI. See also, Justice Department, Title VI Enforcement Evaluation of Interior Department, September 1977.

USDI had been warned that it could not legally amend the Title VI regulation to include sex discrimination, yet it did not seek an alternative way of prohibiting sex discrimination. The Justice Department so warned USDI in March 1973 and the Commission on Civil Rights added its warning in a chapter on USDI in Volume VI in November 1975.[68] Hence, belatedly, USDI is now researching alternatives that would authorize the Department to prohibit sex discrimination. Areas in which such a regulation could have great impact are sex segregation in sports events held in park systems funded by USDI and in use of the facilities by groups which restrict their membership to one sex. The Commission on Civil Rights noted that USDI had not addressed this problem.[69]

Several USDI grant programs appear to be covered by Title IX:

| Grant Programs | FY 1977 Obligations ($ Millions) |
|---|---|
| Public Land for Recreation, Public Purposes (including education) | No figure available |
| Mine Health and Safety Education and Training | 6.08 |
| National Environmental Education Development Programs | No figure available |
| Archaelogical Investigations (universities are grantees) | 1.8 |
| Additional Water Resources Research (university are grantees) | 1.28 |
| Water Resources Research--Assistance to State Institutes (scientific training) | 5.7 |
| Water Resources--Matching Grants to State Institutes | 3.2 |
| TOTAL | 18.08 |

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68 Volume VI, Federal Civil Rights Enforcement Effort, supra note 6, p. 224.

69 Id., p. 769, 226.

Besides these programs, the Bureau of Indian Affairs (BIA)--under Assistant Secretary for Indian Affairs, Forrest Gerard--administers several education and training grant programs, amounting to $187 million in FY 1977, in addition to directly operating BIA schools on Indian reservations. Whether Title IX is applicable to the education grant programs is unclear. The issue has not been examined by the Indian Affairs Division of the Solicitor's Office.[70] The Division's opinion was not solicited regarding a June 1976 memorandum sent to area directors of education by the Commissioner of Indian Affairs. The memo indicated that action should be taken by BIA schools to comply with Title IX.[71]

USDI does not apply Title VI to any of the BIA grant programs because the grant programs are for the benefit only of Indians, and not all races. Indian tribes have been viewed as quasi-sovereign entities with a right to self-determination, but USDI has held since 1971 that Federal statutes of general applicability (e.g., regulatory statutes such as Wholesome Meat Act) do apply to Indian tribes. This interpretation may now be in flux. A pending Supreme Court decision in Santa Clara Pueblo v. Martinez, 45 USLW 3745, may be relevant. The case, which involves sex discrimination in the determination of membership in the tribes, presents the following issues: Does the Indian Civil Rights Act, 25 USC 1301-3, terminate sub silentio the quasi-sovereign status of Indian tribes? Should the Act's equal protection clause be interpreted the same as that in the 14th Amendment? The Interior Department has recommended that the Justice Department not file an amicus brief supporting the position of the Indian woman alleging sex discrimintion.[72]

Potential responsibility for Title IX enforcement by USDI rests with the Office of Equal Opportunity; the Office has a Title VI division. The Office of the Solicitor, headed by Leo Krulitz, has responsibility for determining the legal applicability of Title IX and approving any regulations.

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

The Foundation consists of a Federal Council on the Arts and the Humanities, a National Endowment for the Arts and a National Endowment for the Humanities. Both Endowments award grants to individuals, private nonprofit organizations, public agencies and institutions of higher education.[73]

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70 Telephone interview on October 13, 1977 with David Jones, attorney in Indian Affairs Division, Office of Solicitor, USDI.

71 June 17, 1976 memorandum from Morris Thompson, Commissioner of Indian Affairs to all area directors.

72 Telephone interview on October 3, 1977 with Pam Sayad, attorney in Indian Affairs Division, Office of Solicitor, USDI.

73 For an in-depth analysis of how women artists and scholars have been affected by the Foundation's grants, see the draft report by the Women's Equity Action League, Educational and Legal Defense Fund, Fall 1977.

The Foundation has a number of grant programs which appear to be covered by Title IX:

Endowment for the Arts

| Grant Programs | FY 1977 Obligations ($ Millions) |
|---|---|
| Promotion of the Arts--Education | 4.49 |
| Promotion of the Arts--Literature | 2.14 |
| Promotion of the Arts--Music (includes music education projects) | 12.94 |
| Promotion of Media Arts (includes grants to education institutions) | 7.02 |
| Promotion of Architecture and Environmental Arts | 3.47 |
| Promotion of Arts--Expansion Arts (includes training in the arts) | 5.88 |
| | 35.9 |

| Endowment for the Humanities | FY 1977 Obligations ($ Millions) |
|---|---|
| Media Grants | 6.1 |
| General Research Program | 3.2 |
| Fellowships and Stipends for Professors | 2.0 |
| Education Pilot and Development Grants | 7.0 |
| Higher Education Projects | 3.0 |
| Public Program Development | 3.0 |
| Youth Programs | .7 |
| Summer Seminars for College Teachers | 3.4 |
| Cultural institutions | 1.8 |
| Fellowships in Residence for College Teachers | 2.7 |
| Humanities Institutes | 2.0 |
| Summer Stipends | .5 |
| Fellowships at Centers for Advanced Study | .6 |
| National Board of Consultants | .5 |
| Research Collections | 3.0 |
| Museums and Historical Organizations Program | 6.2 |
| Research Materials | 4.6 |
| Elementary and Secondary Education | 4.0 |
| Planning and Analysis | 3.6 |
| State Based Programs | 17.5 |
| Sub-Total | 75.0 |

Within the National Endowment for the Arts (NEA), responsibility for Title IX enforcement rests in the two person Office of General Counsel. Robert Wade, the General Counsel, has not made any legal determination that Title IX is applicable, but his initial reaction is that nearly all of NEA's programs are "cultural" and not "educational". NEA does not want to be considered as having "educational" programs with attendant red tape and is therefore opposed to the Congressionally initiated proposal to establish a separate Cabinet-level Department of Education which would include the Foundation.[74] Wade stated that there have been only a few sex discrimination complaints in the last six years. No data by race, ethnic origin or sex are collected by NEA on its grant beneficiaries. His office is currently revising the Title VI regulation. There is a Title VI delegation agreement with HEW but it covers relatively few grantees.[75]

Within the National Endowment for the Humanities (NEH), responsibility for Title IX enforcement also rests in the two person Office of General Counsel, headed by Joseph Schurman. NEH assumes that Title IX does apply to nearly all its grant programs. Its grant documents contain a boilerplate reference to Title IX, but grantees are not required to sign an assurance of compliance with Title IX (as they are for Title VI). NEH has not issued a Title IX regulation, and does not want to adopt HEW's Title IX regulation because it is too broad. NEH does not collect data on the race, ethnic origin and sex of its grant beneficiaries. There is a recent Title VI delegation agreement with HEW, but NEH does not plan to seek a Title IX delegation agreement. Grants have been denied to universities which have sought NEH followships restricted to one sex.[76]

## NATIONAL SCIENCE FOUNDATION (NSF)

Among the purposes of NSF is the improvement of science education at all levels: to help produce the variety of trained scientific and technical personnel needed by the nation, to foster scientific literacy and to increase the effectiveness of education through the application of science and technology."[77] NSF also supports much scientific research conducted by colleges and universities.

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74 There are several Education Department bills. The most comprehensive one is Senator Ribicoff's S. 991. The Senate Governmental Affairs Committee held hearing on the bills in October 1977.

75 Telephone interview on September 28, 1977, with Robert Wade, General Counsel, National Endowment for the Arts.

76 Telephone interview on September 28, 1977, with Joseph Schurman, General Counsel, National Endowment for the Humanities

77 US Government Organization Manual, 1976-77, p. 580.

Nearly all of NSF's grant programs appear to be covered by Title IX:

| | FY 1977 Grants ($ Millions) |
|---|---|
| Science Manpower Improvement | 30.4 |
| Science and Society Program | 4.3 |
| Science Education Research and Development and Resources Improvement | 39.6 |
| Astronomical, Atmospheric, Earth and Ocean Sciences | 114.3 |
| Biological, Behavioral, and Social Sciences | 126.6 |
| Intergovernmental Program | 6.8 |
| Research Applied to National Needs | 60.8 |
| Mathematical and Physical Sciences and Engineering | 223.9 |
| TOTAL | 606.7 |

Included in the Science Education Research Program listed above is a small program to increase participation in science by women, who constitute only 6% of those employed as scientists or engineers in the U.S. The Women in Science Program in the Science Education Directorate funded 34 projects totalling $.9 million in FY 1978.[78]

Within NSF, responsibility for Title IX enforcement rests principally with the Office of General Counsel, headed by Charles Herz. There is no separate civil rights office and HEW is relied upon for compliance reviews. The head of the Directorate for Science Education, James F. Rutherford, and the Director of the entire Foundation, Richard Atkinson, also bear some responsibility.

The Office of General Counsel has not given much consideration to Title IX's applicability to NSF programs, believing that NSF grantees are already covered by HEW regulations and enforcement programs. There is no Title IX regulation or delegation agreement with HEW, although nearly all of NSF's grantees also receive money from HEW. NSF does have a Title VI delegation agreement with HEW. Grantees are not required to sign an assurance of compliance with Title IX, although Title VI assurances are required.

In the July 29, 1977 Federal Register, NSF published a revised grant policy manual which is made a part of every grant. The manual contains a one sentence reference to Title IX. The Office of General Counsel is currently drafting a regulation to implement the manual but no explanation of what acts constitute prohibited sex discrimination is planned. NSF has

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78 NSF news release, April 25, 1977. There has been difficulty in getting Congress to appropriate money for this program, and lobbying by women's groups has been minimal, according to Ann Strauss, staffer for Senate Subcommittee on Health and Scientific Research. Telephone interview on September 9, 1977.

traditionally relied on program guidelines instead of regulations published in the Federal Register.[79] Of four program guides reviewed, only one explained that sex discrimination is prohibited in the program, although all explained Title VI's requirements in paragraphs labeled "participant conditions."[80]

## STATE DEPARTMENT

The State Department has only two grant programs--but very prestigious ones--which appear to be subject to Title IX. These are the Fulbright-Hays Scholarship Program for Graduate Students ($2.37 million) and the Fulbright-Hays Program for University Lecturers and Research Scholars ($7.36 million in FY 1977). Both of these programs have been subject to Title VI although they involve residence outside the U.S.[81] The Department has not considered the possible applicability of Title IX to any of its programs, although in September 1977, due to pressure from the Justice Department,[82] it conducted a review of its grants programs to determine Title VI coverage.

The guide for the Fulbright-Hays programs--The Board of Foreign Scholarship Policy Statement--contains statements that there shall be no sex discrimination in the selection of applicants. However, the authorizing statute (22 USC 2451 et seq) states that preference will be given to those who have served in the armed forces.[83] Since the military has a quota for women, this preference discriminates against women. Data on the sex of fellowship recipients are not collected, although race/ethnic origin data are collected. (In a January, 1978 letter the Department said that such data will be collected in the future.) Responsibility for Title VI enforcement is shared by the Bureau of Administration and the Office of Equal Employment Opportunity; responsibility for Title IX enforcement is shared by the Bureau of Educational and Cultural Affairs and the Office of Equal Employment Opportunity. Scarce staff resources appears to be a problem.[84]

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79 Telephone interview on August 25, 1977 with Lewis Grotke, Assistant General Counsel, National Science Foundation.

80 The 1977 guides examined were: Directory of Science Training Programs for High Ability Secondary School Students, Guide for Student-Originated Studies, Guide for Student Science Training Program, and Guide for Undergraduate Research Participation (sex discrimination mentioned.)

81 Telephone interview on September 21, 1977 with Jacques Bushong, Legal Advisor to the Bureau of Educational and Cultural Affairs.

82 Telephone interview on September 19, 1977 with Glen Mabray, Title VI Officer for State Department.

83 Supra, note 81.

84 Telephone interview on September 19, 1977 with Georgiana Prinze, Acting Director of Office of Equal Employment Opportunity, State Department.

## VETERANS ADMINISTRATION (VA)

The VA administers some very large education and training grant programs which are subject only to Title IX and not to any other sex discrimination prohibition.[85] As of November, 1977 these programs involve 3,886 proprietary institutions, 24,769 apprenticeship and on-the-job training programs, and innumerable colleges and universities which have courses approved for the payment of VA benefits.[86] The following programs appear to be covered by Title IX:

| | FY 1977 Obligations ($ Millions) |
|---|---|
| Veterans Educational Assistance (GI bill) | 3,927.5 |
| Dependents' Educational Assistance | 234.1 |
| Post Vietnam Era Veterans' Educational Assistance | .06 (.46 in FY 1978) |
| Vocational Rehabilitation for Disabled Veterans | 102.3 |
| Education and Training of Health Services Personnel | 237.4 |
| Assistance in Establishment of New State Medical Schools | 9.8 |
| Grants to Affiliated Medical Schools | 24.9 |
| Rehabilitative Engineering Research | 6.4 |
| TOTAL | 4,542.5 |

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85 Titles VII and VIII of the Public Health Service Act, which prohibit sex discrimination in admission of students in grant programs under the Act, do not apply to VA's grant programs for medical schools and training of health personnel.

86 Personal interview with Wanda Johnson, Equal Opportunity Specialist, Veterans Assistance Service, VA, on August 19, 1977, updated by letter from Guy H. McMichael III, General Counsel, VA, January 17, 1978.

Within VA, responsibility for Title IX policy and enforcement rests at several levels. For assistance programs to medical schools, responsibility rests with the civil rights advisor to the Chief Medical Director. Responsibility for non-medical programs rests with Assistant Director for Equal Opportunity, within the Department of Veterans Administration. He has a staff of four people who monitor compliance reviews and complaint investigations which are conducted by compliance specialists under 57 field station directors. He reports to the Director of the Veterans Assistance Service, who in turn reports to the Chief Benefits Director, Dorothy Starbuck. The General Counsel's Office, under Guy H. McMichael, III, provides advice to these officials, concurs in the regulations drafted by them, and represents VA when informal enforcement is required.

Since December 1972 the Veterans Administration has recognized that Title IX applies to many of its programs. (Refer to the history of contacts between HEW and VA on page xx.) Despite this recognition of enforcement responsibility, VA still has not published a Title IX regulation although such regulations have been drafted by the Equal Opportunity Staff, Veterans Assistance Service.[87] VA was prodded by Representative Edith Green (then Chair of the House Education Subcommittee) in December, 1973 and by the Commission on Civil Rights in May 1974. In a December 22, 1973, letter to Edith Green, the VA Administrator stated that some VA staff had been designated to coordinate the development of a Title IX regulation with HEW and the Justice Department.[88] In May 1974, VA officials interviewed by the Commission on Civil Rights disclaimed responsibility for investigating sex discrimination in proprietary institutions and apprenticeship and on-the-job (OJT) training programs because there was no delegation agreement from HEW regarding proprietary schools.[89] As of January 1978, there is still no Title IX delegation agreement between VA and HEW, although Title VI delegations exist: VA has delegated to HEW enforcement responsibility for elementary and secondary schools, institutions of higher education and medical facilities; HEW has delegated to VA enforcement responsibility for proprietary schools.

In January 1976, VA revised its compliance report form (27-4274) for submission to proprietary schools, apprenticeship programs and OJT sponsors. The significance of these reports is that they enable VA to identify institutions and particular programs which have a substantially smaller percentage of women than would be expected. The VA then gives priority to such institutions for compliance reviews. The revised form requires data reporting by sex for applicants, enrollees, placement, financial aid, staff and dis-

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87 The Office submitted the draft regulations to the Office of General Counsel in June, 1977.

88 Volume III, Federal Civil Rights Enforcement Effort, supra note 44, p. 312, fn. 880.

89 Id., pp. 311-312.

crimination complaints. On May 19, 1976, the Office of General Counsel ruled that Title IX is applicable to VA's apprenticeship and OJT programs.[90] In Spring 1976 VA required completion of the form as a result of the Justice Department 1975 survey of VA's Title VI program. (Completion of the form will not be required in the future. For proprietary schools only, data are updated during on-site reviews.) VA received many complaints from apprenticeship and OJT sponsors that the compliance report duplicated reporting requirements by the Equal Employment Opportunity Commission and Labor Department's Bureau of Apprenticeship Training. The VA is presently drafting an agreement with the Department of Labor under which the latter will share civil rights data already collected. For those OJT programs which are not registered with the Labor Department and which have been refusing to submit civil rights data, VA is seeking from the Justice Department an exemption from Title VI & Title IX.[91]

In August 1976, VA revised its Title VI Compliance Review Report Form (27-8734) to include questions relating to sex discrimination. The report is used by VA compliance specialists in conducting compliance reviews. From September 1976 to August 1977, approximately 7600 compliance reviews were conducted (including all of the proprietary schools and about 10% of the OJT programs). There have been no findings of non-compliance with Title IX. There have been three actual complaints of sex discrimination, but the VA field investigators have received no training in Title IX and no copies of HEW's Title IX regulation; their training manual contains only a short reference to Title IX stating that VA has not yet issued a Title IX regulation and any questions should be referred to the Equal Opportunity Staff, Veterans Assistance Service, in Washington, DC. As of September 1977, VA plans to revise the Title VI Manual, to issue a training guide which will include material on Title IX and to notify veterans of VA responsibility to prevent and remedy discrimination--including sex discrimination--in education and training programs approved for payment of VA benefits.[92] Significantly, the VA General Counsel in a January 17, 1978, letter to the Advisory Counsil insists that VA has never enforced Title IX and "...will not begin enforcing Title IX until the effective date of its Title IX regulations..." which have not yet been published in the Federal Register.

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90 May 19, 1976, memorandum to Chief Benefits Director from General Counsel, Advisory Opinion re Applicability of Title IX to Apprenticeship and On-the-job Training Programs.

91 Sponsors of the programs assert that they do not receive Federal financial assistance as a result of veterans enrolled in their training programs, because (1) the veterans are paid wages as employees, (2) the expenses of training are incurred entirely by sponsors, and (3) payment of VA education benefits directly to the veteran trainees does not benefit the sponsors. January 17, 1978, letter from VA General Counsel to NACWEP.

92 Interview with Wanda Johnson, Equal Opportunity Specialist, Veterans Assistance Service, VA, on August 19th and September 23, 1977.

VA's draft Title IX regulation is very similar to HEW's Title IX regulation. There are only two potentially significant differences. First, the draft regulation omits HEW's requirement that recipients conduct an institutional self-evaluation (20 CFR 86.3(c)-(d)). VA's rationale is that HEW's purpose was to give institutions a head start in complying with Title IX and that since VA already requires proprietary schools, apprenticeship and OJT programs to submit compliance reports, the self evaluation is unnecessary. Also, VA's compliance reviews are apt to probe more deeply than the institutions would. Second, VA's draft regulation omits HEW's requirement that recipients establish grievance procedures (20 CFR 86.8). Again, the rationale is that the system for filing complaints with VA makes such a requirement unnecessary and that the requirement would be onerous or ridiculous for the many small apprenticeship and OJT programs. Perhaps a better approach is to exempt the very small programs, but to require that proprietary schools and other large programs establish internal procedures for handling sex discrimination complaints.

## IV. AGENCIES SUBJECT TO DOUBLE COVERAGE

There are twelve Federal agencies which appear to have education or training grant programs subject to Title IX and to additional broader prohibitions of sex discrimination contained in various authorization statutes. Since these prohibitions apply to all Federal financial assistance programs under a particular statute or agency--and not just to educational programs--the twelve agencies will be treated more briefly than the Federal agencies subject only to Title IX. Summary tables follow.

| AGENCY | PROGRAMS WHICH APPEAR TO BE COVERED BY TITLE IX (FY 1977 OBLIGATIONS, $ MIL) | | ADDITIONAL SEX DISCRIMINATION PROHIBITION IN AUTHORIZATION STATUTE AND CODE OF REGULATIONS | PERSONS RESPONSIBLE FOR ENFORCEMENT | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| ACTION | University Year for Action<br>National Student Volunteer Program<br>Foster Granparent Program<br>Retired Senior Volunteers<br>VISTA<br>Youth Challenge Program | 4.9<br>.3<br>34.0*<br>19.0*<br>23.0*<br>.2<br>81.5 | 42 USC 5057<br>45 CFR Part 1203 | Assistant Director for Equal Opportunity, reports directly to ACTION Director, Sam Brown. | ACTION is under pressure from Justice to initiate Title VI enforcement. As of Sept. 1977, data on sex of grant beneficiaries are not collected, compliance reviews are not conducted and no Title VI or Title IX delegation agreement exists with HEW. Unaware of double coverage. |
| Agency for International Development (AID) | Institutional Centers to Aid Foreign Development<br>Technology Applications for Less Developed Countries | 2.5<br>20.3<br>22.8 | 22 USC 2251k (Percy Amendment) Policy Determination 60 (Sep 16, 1974) | Director, Equal Opportunity Programs; Coordinator, Women in Development Office; Director, Office of Contract Management. | The Percy Amendment which mandates that women be integrated into the development process is not regarded by AID as a civil rights law but it has that effect: all grantees are directed to involve women in projects as employees and beneficiaries.[1] Unaware of double coverage of programs where U.S. universities are grantees. |
| Appalachian Regional Commission (ARC) | Appalachian Vocational and Other Education Facilities and Operations<br>Appalachian Child Development | 18.2<br>16.1*<br>34.3[2] | 40 USC App. 223 | Director of Education Division; General Counsel, Robert McCloskey. | ARC which is a Federal/state body is not a "Federal agency" under its authorization statute; therefore it claims that it has no Title VI or IX duties. Justice Dept. has never clearly resolved this issue. It conducts no civil rights enforcement at all. Many of its education programs receive HEW's approval and |

| AGENCY | PROGRAMS WHICH APPEAR TO BE COVERED BY TITLE IX (FY 1977 OBLIGATIONS, $ MIL) | | ADDITIONAL SEX DISCRIMINATION PROHIBITION IN AUTHORIZATION STATUTE AND CODE OF REGULATION | PERSONS RESPONSIBLE FOR ENFORCEMENT | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| | | | | | thus are subject to HEW's Title IX enforcement. ARC has never received any sex discrimination complaints. |
| Commerce Department | Sea Grant Support<br>Fire Research and Safety<br>Academy Planning Assistance<br>Economic Development Grants and Loans for Public Works and Development Facilities<br>Special economic development and adjustment assistance<br>Grants to States for Supplemental Funding | 26.5<br>2.0<br>.5<br>2.5*<br>77.0*<br>20.0*<br>128.5 | 42 USC 3121 et seq.<br>13 CFR Part 311: affects only programs under Economic Development Administration (last 3 grants listed)[3] | Special Assistant for Civil Rights; Director, Office of Civil Rights, Economic Development Adm.; Deputy Assistant General Counsel for Administration and Management. | Although Commerce has been aware of the need to issue a Title IX regulation since 1972 for those programs not subject to the EDA provision, it has not done so. There is no systematic collection of civil rights data, including sex of beneficiaries. A new Office of Civil Rights is expected to strengthen enforcement efforts. (3A) |
| Community Services Administration (CSA) | Community Action<br>Older Person Opportunities and Services<br>Community Economic Development<br>Summer Youth Recreation<br>Emergency Energy Conservation Services | 330.0*<br>10.0*<br>48.2*<br>17.0<br>27.5<br>432.7 | 42 USC 29.71(c)<br>45 CFR Part 1010 | Associate Director for Human Rights, William Davis. General Counsel Frank Jones. | CSA plans to issue a CSA Grantees' Civil Rights Program Manual. CSA was unaware of the applicability of Title IX to some of its programs. |
| Energy Department | Faculty and Student Participation<br>Faculty Training Institutes<br>Research Reactor and Materials Assistance<br>Traineeships for Graduate Students in Engineering<br>Used nuclear type equipment Grants | 1.9<br>1.5<br>.6<br>.5<br>No Figure | P.L. 95-91 or 91 Stat. 565: (new Energy Department authorization); old provision was 42 USC 5891. | Director, Office of Equal Opportunity. | The Energy Department (and its predecessor ERDA) have not issued an implementing regulation for the sex discrimination prohibition. The Department is currently initiating Title VI enforcement. |







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| AGENCY | PROGRAMS WHICH APPEAR TO BE COVERED BY TITLE IX (FY 1977 OBLIGATIONS, $ MIL) | ADDITIONAL SEX DISCRIMINATION PROHIBITION IN AUTHORIZATION STATUTE AND CODE OF REGULATION | PERSONS RESPONSIBLE FOR ENFORCEMENT | ADDITIONAL COMMENTS |
|---|---|---|---|---|
| | Work experience — No figure<br>R&D in nuclear, solar, geothermal Sciences — 2,525.3*<br>R&D in Fossil Energy — 483.1*<br>R&D in Energy Conservation — 160.8*<br>3,169.2 | | | |
| Environmental Protection Agency (EPA)[4] | Air Pollution Control Fellowships — .6<br>Air Pollution Control Manpower Training — .4<br>Air Pollution Technical Training — 1.5<br>Solid Waste Disposal Training — .1<br>Environmental Protection--Consolidated Research — 15.8<br>Air Pollution Control Research — 4.2<br>Pesticides Control Research — 1.4<br>Solid Waste Disposal Research — .5<br>Water Pollution Research — 11.3<br>Safe Drinking Water Research — 6.9<br>Water Pollution: No figure<br>Direct Training — .5<br>Manpower Program — 1.1<br>Orientation and Training<br>Professional Training Grants — .4<br>Fellowships — .2<br>44.8 | 33 USC 1251 et seq., 40 CFR 12: applies only to grant programs under Federal Water Pollution Control Act | Director of Office of Civil Rights; Deputy Administrator, Barbara Blum. General Counsel, Bernice Goldstein. | EPA has been aware of Title IX's applicability to some of its programs since 1975 but has not issued a regulation. It recognizes that its research grant programs are covered where universities are grantees. EPA does not collect data on the sex of its grant beneficiaries. 40 CFR 12 excludes employment from coverage although the statute does not. |
| Labor Department (DOL)[5] | Apprenticeship Outreach — 16.6<br>Employment Service — 613.5*<br>Senior Community Service Employment Program — 90.8*<br>Work Incentives Program (WIN) — 356.9*<br>Comprehensive Employment Training Act (CETA):<br>Small Research Grants — .5<br>Job Corps — 274.1<br>Employment and Training Institutional Grants — 1.4 | Nat. Apprenticeship Act: 29 USC et seq. 29 CFR 30<br>WIN: 42 USC 601 et seq: 29 CFR 56<br>Older Americans Act: Title IX, 29 CFR 89.37<br>CETA: 29 USC 801 et seq: 29 CFR Parts 96-98 | Assistant Secretary for Employment and Training, Ernest Green. Office of Investigation and Compliance. Chief, Division of Equal Employment Opportunity. | DOL was unaware of double coverage of its training programs by Title IX. (Title VI provides double coverage of the programs, too.) DOL is beginning national reviews of CETA sponsors --something which had not been done systematically before. There will be a 50% increase in staff. |

| AGENCY | PROGRAMS WHICH APPEAR TO BE COVERED BY TITLE IX (FY 1977 OBLIGATIONS, $ MIL) | | ADDITIONAL SEX DISCRIMINATION PROHIBITION IN AUTHORIZATION STATUTE AND CODE OF REGULATION | PERSONS RESPONSIBLE FOR ENFORCEMENT | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| | National On-the-job Training | 18.6 | Employment Service : 20 CFR Part 651 | | Very few sex discrimination complaints are received. DOL's data collection is by race and by sex, but not cross-tabulated. Permission to collect such data is being sought from OMB. CETA prime sponsors are now required to submit compliance reports to DOL regional offices. |
| | Migrant and Seasonal Farm Workers | 92.0* | | | |
| | Indian and Native American Employment and Training | 65.4 | | | |
| | Employment and Training R&D Projects | 12.3 | | | |
| | Youth Employment and Demonstration Projects (P.L. 95-93, Aug. 1977) | 1000.0* | | | |
| | Formula grants under Title I (includes classroom and on-the-job training, state vocational education agencies) | 1120.6[6] | | | |
| | | 2662.7 | | | |
| Law Enforcement Assistance Administration (LEAA), Justice Dept.[7] | Technical Assistance | 13.0* | 42 USC 3701 et seq. 42 USC 5601 et seq. 28 CFR Part 42 | Director, Office for Civil Rights Compliance; General Counsel, Thomas Madden | LEAA is aware of double coverage. The Office for Civil Rights Compliance is basically complaint oriented and focussed on employment. The LEAA Act was amended in Oct 1976 to include time frames for handling complaints and triggers for fund cutoff. No compliance reviews of universities are done. There is no Title IX delegation agreement with HEW, although LEAA sought one unsuccessfully in 1975. |
| | Student Financial Aid | 40.0 | | | |
| | Graduate Research Fellowships | .3 | | | |
| | R&D Project Grants | 26.8 | | | |
| | R&D--Visiting Fellowships | .2 | | | |
| | Educational Development | .5 | | | |
| | Student Internships | .3 | | | |
| | Training | 3.2 | | | |
| | Organized Crime Prosecutorial Training | .2 | | | |
| | Juvenile Justice and Delinquency Prevention | 7.5* | | | |
| | | 92.1 | | | |

| AGENCY | PROGRAMS WHICH APPEAR TO BE COVERED BY TITLE IX (FY 1977 OBLIGATIONS, $ MIL) | | ADDITIONAL SEX DISCRIMINATION PROHIBITION IN AUTHORIZATION STATUTE AND CODE OF REGULATION | PERSONS RESPONSIBLE FOR ENFORCEMENT | ADDITIONAL COMMENTS |
|---|---|---|---|---|---|
| Small Business Administration (SBA) | Management Assistance to Small Businesses | 23.1* | 15 USC 631 et seq; 13 CFR Part 113 | Chief, Compliance Division, Office of Equal Employment Opportunity and Compliance. | SBA is aware of double coverage of its programs. SBA's reg. prohibits grantees from sponsoring sex-stereotyped recreational programs (e.g. Little League teams). SBA does not want a Title IX delegation agreement with HEW because most grantees are small and would not be reviewed. SBA has received no complaints re education or training. SBA monitors compliance with own reg which resembles Title IX. |
| | Management and Technical Assistance to Disadvantaged Businessmen | 7.4 | | | |
| | Service Corps of Retired Executives and Active Corps of Executives | 1.3 | | | |
| | | 31.8 | | | |
| Transportation Dept. (DOT) | Boating Safety | 5.5 | 14 USC 1451-89 | Director, Office of Civil Rights; Director of Civil Rights, Urban Mass Transportation Administration (UMTA). | Although there is no implementing regulation for the sex discrimination prohibition in UMTA grant programs, grantees are required to sign an assurance of compliance. Pre- and post-award compliance reviews check for sex discrimination. Data are collected on employment and participation in training. University grantees are not monitored although there is pre-award clearance with HEW. Data collection by sex was begun in Jan 1976. |
| | Urban Mass Transportation: | | | | |
| | Grants for University Research and Training | 2.0 | 49 USC 1608f | | |
| | Managerial Training | .5 | 45 USC 803 | | |
| | Technology R&D | 1.0 | | | |
| | | 10.1 | | | |
| | Railroad Revitalization and Regulatory Reform | 832.0 | | Director, Office of Civil Rights, Federal Railroad Administration. | |
| | University Research Projects | 3.5 | | | |

| AGENCY | PROGRAMS WHICH APPEAR TO BE COVERED BY TITLE IX (FY 1977 OBLIGATIONS, $ MIL) | ADDITIONAL SEX DISCRIMINATION PROHIBITION IN AUTHORIZATION STATUTE AND CODE OF REGULATION | PERSONS RESPONSIBLE FOR ENFORCEMENT | ADDITIONAL COMMENTS |
|---|---|---|---|---|
| Office of Revenue Sharing (ORS), Treasury Department | General Revenue Sharing Funds Used for Education (FY 1976) 1,442.5<br><br>Anti-recession Fiscal Assistance (may be used for education by recipient governments) Figure not Available | 31 USC 1242<br>31 CFR 51.50-51.75<br><br>42 USC 6721 et seq<br>31 CFR 52.40, 52.60, 52.71 | Director of ORS, Bernadine Denning. Manager, Civil Rights Division, Chief Counsel, William Sager | ORS has taken the position that it is not a Title VI agency subject to Justice Department coordination. No determination of Title IX's applicability has been made. GRS regulation provides for coordination with other Federal agencies for enforcement of Title VI and other civil rights laws, but not Title IX.<br><br>ORS is complaint-oriented. Few compliance reviews are done since over 37,000 units of government receive GRS funds. 1976 Amendments to the Act strengthened the enforcement process. Eliminated were previous restrictions on local governments using the funds for education and as matching funds for other Federal grants. |

FOOTNOTES

*Indicates that the budget figure is for the entire grant programs and not just the education/training component.

1. See: Agency for International Development, Women in Development Progress Report to Members of Senior Operations Group, June 17, 1976.

2. In FY 1978 a total of about $25 million will be spent on education by the Appalachian Regional Commission, according to Hal Morse, Director of Education. Interview on August 23, 1977.

3. The prohibition of sex discrimination in EDA grants is limited by the use of the word "project" instead of "programs" in the statute (drafting error?). The EDA regulation requires that minorities but not women be on advisory bodies. Telephone interview on September 21, 1977 with Arthur Cizek, Special Assistant for Civil Rights, Commerce Department.

3A. January 9, 1978, letter to National Advisory Council on Women's Education Programs, from Arthur E. Cizek, Special Assistant for Civil Rights.

4. See analysis of EPA in U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort, Volume VI (November 1975) pp. 585-644, 793-797.

5. See analysis of DOL programs in Id., pp. 394-465, 778-783.

6. This is the figure for a 9 month period ending June 1977. $407 million of this amount is for classroom training. Telephone interview with James Shone, budget office of Employment and Training Administration, October 16, 1977.

7. See analysis of LEAA's programs, Id., pp. 270-393, 773-777. See also this report, p. 42, for contacts between LEAA and HEW re Title IX delegation agreement.

8. See analysis of DOT's programs: Supra note 4, pp. 518-584, 789-792.

9. Office of Revenue Sharing argues that since recipient units of state and local government choose how to spend the Federal money it becomes local funds and is not "Federal financial assistance."

10. The 1976 General Revenue Sharing Amendments (P.L. 94-488) provides specific time frames for handling complaints, provides for a private right to sue after a specific period of time and provides for attorneys' fees, and places on recipients accused of discrimination the burden of proving that the program is not directly funded by GRS.

## V. RECOMMENDATIONS

As this survey report has indicated, there is a total lack of both intragovernmental coordination of Title IX enforcement and enforcement of the numerous sex discrimination prohibitions in other statutes. The result is that Title IX has been ignored by many agencies having enforcement responsibility. Prompt attention and action are necessary.

1. The President should issue an Executive Order designating the Department of Justice as the lead agency to coordinate Title IX enforcement.* The Executive Order should parallel as much as possible Executive Order 11764 which covers Title VI coordination.

   (On January 27, 1978, Drew S. Days, III, Assistant Attorney General, Civil Rights Division of Justice, wrote to the Advisory Council: "With respect to your recommendations, as previously noted, we would support an Executive Order extending coordination authority for Title IX enforcement to the Department of Justice, and the Department would probably implement such an order in the manner you suggest.")

2. The Department of Justice should call a conference of relevant agencies similar to the one held concerning Title VI. The conference should serve to educate agencies to their responsibilities concerning Title IX coordination and symbolize the Department of Justice's active commitment to ending sex discrimination.

3. Each agency, in coordination with Justice Department, should determine promptly which of its programs are covered by Title IX and/or other statutes prohibiting sex discrimination.

4. Each agency covered should develop implementing regulations or guidelines within 90 days of the determination of coverage.

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*The Justice Department is the logical choice for lead agency. It already has responsibility for coordinating Title VI enforcement and is actively pressuring agencies to meet standards in enforcement. The Justice Department has credibility and established channels of communication with all the agencies subject to Title IX. HEW--despite its experience with educational institutions--has several disadvantages. Its credibility as defacto lead agency under OMB's 1972 directive is low because HEW utterly failed to coordinate the development of uniform Title IX regulations among the various agencies subject to Title IX. Serious deficiencies exist in the Title VI delegation agreements between HEW and other agencies. Many major, and as yet unresolved, problems have been identified in HEW's Office of Civil Rights by the General Accounting Office (March 30, 1977 report sent to Senator Birch Bayh); the Office is subject to a number of court orders to improve handling of its existing civil rights enforcement responsibilities. In addition, the proposed reorganization of HEW raises serious questions about the future role of that agency in civil rights enforcement regarding educational programs and activities.

5. The Civil Rights Task Force at the Office of Management and Budget should examine the subject of sex discrimination enforcement in Federal grant programs when it studies Title VI enforcement and makes recommendations for reform to the President and Congress. The OMB Task Force should work closely with the Justice Department's Sex Discrimination Task Force.

   (The January 27, 1978 letter from Assistant Attorney General Days stated: "Our Task Force on Sex Discrimination would be pleased to work with the OMB Civil Rights Task Force in its examination of sex discrimination enforcement in federal grant programs.")

6. OMB should enforce its May, 1975 directive to budget examiners to evaluate women's participation in Federal programs and to examine programs for their impact on women.

7. OMB should enforce the requirements of Circular A-11 which mandates reporting of civil rights enforcement activities including Title IX, prior to OMB review of budgets. (Currently no agency other than HEW has submitted data on Title IX enforcement.)

8. (a) OMB should require each Federal agency to compile statistics by sex concerning beneficiaries of Federal grant programs.

   (b) OMB should also require each Federal agency to cross-tabulate its statistics by sex with those on race/national origin.

9. OMB Circular A-95 should be revised to include women as a "population group" to be protected from discrimination. Adequate mechanisms to secure comments on the impact upon women of proposed Federal assistance should be instituted.

10. Educational institutions which are grantees of surplus or used Federal property should be required to assure Title IX compliance in the same fashion as that used for Title VI.

APPENDIX A

On December 21, 1977, the Advisory Council sent a copy of the draft of this report to the head of each of the agencies discussed, with a request for comments, corrections of any factual errors, or information about current relevant activities. The original deadline of January 9 was extended until January 27. The agencies asterisked on the following list replied and their comments, where appropriate, have been included.

Action

Agency for International Development

*Agriculture Department

Appalachian Regional Commission

*Commerce Department

Community Services Administration

*Defense Department

Energy Department

*Environmental Protection Agency

Federal Programs Section, the Justice Department

*General Services Administration

Health, Education and Welfare Department

*Internal Revenue Service, Treasury Department

Interior Department

*Labor Department

Law Enforcement Assistance Administration, Justice Department

National Endowment for the Arts and Humanities

*National Science Foundation

Office of Management and Budget

Office of Revenue Sharing, Treasury Department

*Small Business Administration

*State Department

Transportation Department

*Veterans Administration

United States Department of Justice
WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

JAN 27 1978

Mary Beth Peters
Council Chair
National Advisory Council on
Women's Educational Programs
1832 M. Street, N. W.
Washington, D.C. 20036

Dear Ms. Peters:

The Attorney General has asked me to respond to your letter of December 21, 1977, requesting comments on your draft report on Title IX enforcement by federal agencies.

We would like to begin by noting that the Department of Justice has no authority to enforce Title IX with respect to grants administered by other federal agencies except in response to referral by HEW or the administering agency. To date, we have not received any such referral.

The Department does have authority under Executive Order 11764, which was issued January 21, 1974, to implement its coordinating authority under Title VI by regulation. Since that authority does not extend to the enforcement of Title IX, we could not include Title IX provisions in our Title VI regulations.

We did, however, propose broadening the Title VI regulations to include sex discrimination in programs whose non-discrimination provisions include both Title VI type coverage (race, color, or national origin) and a prohibition against sex discrimination as well. For purposes of consistency, former Assistant Attorney General J. Stanley Pottinger proposed that this Department coordinate sex discrimination under those statutes and that such coordination be reflected in the final version of the Attorney General's Title VI coordination regulations.

JAN 27 1978

He made this proposal by letter dated July 27, 1976, to the four agencies administering such programs, the Departments of Labor, Treasury, Housing and Urban Development, and the Law Enforcement Assistance Administration. Only LEAA agreed to the proposal.

The other agencies responded as follows:

Treasury Department

"...The Department continues to hold the position that Executive Order 11764 is not applicable to the General Revenue Sharing Program established under the State and Local Fiscal Assistance Act of 1972. Accordingly, it is our view that the proposed Department of Justice regulations should not be expanded in scope to cover general revenue sharing, as we do not believe such action would be consistent with the 'clearly expressed congressional intent that revenue sharing was to be an entirely new concept in Federal fiscal programs to which the old rules for Federal grants would not apply.' (Statement of Congressional Intent signed by Chairman and ranking minority members of House Committee on Ways and Means and Senate Finance Committee (June 28, 1974))."

Department of Labor

"...We agree with your position, as stated in your letter to me of July 27, that E.O. 11764 does not authorize DOJ to coordinate the sex discrimination enforcement activities of the Federal agencies. Sec. 712 of CETA, however, and for example, specifically authorizes the Secretary of Labor to handle sex discrimination complaints under the CETA program. Other DOL regulations, for example,those for the Work Incentive Program at 29 CFR Part 56, also prohibit discrimination by sex and provide for a complaint system. We do not believe that there has been a failure on the Department's part of enforcement in this area, or that there are other reasons sufficiently persuasive to convince the Department to delegate to DOJ the authority to coordinate the Department's anti-sex discrimination efforts."

Department of Housing and Urban Development

"...Your request must be considered in the context of the broader issue raised by the proposed regulation, that is, the coverage of §109 activities generally. We have strong legal and policy objections to the expansion of the Attorney General's Title VI regulation under E.O. 11764 to include coverage of §109 activities generally or coverage based on sex, absent specific statutory or Executive Order authority which would permit such expansion. E.O. 11764 which provides the basis for the Attorney General's authority does not include such coverage, and, of course, Title VI does not include coverage based on sex. Section 109 does not provide the Attorney General with independent authority to enforce the provisions of §109 absent a referral for enforcement of a case of noncompliance by the Secretary of Housing and Urban Development."

As the result of these responses, the proposal was dropped.

The Department of Justice is representing HEW in several cases challenging the validity of its regulations. In these cases we have argued that HEW has broad authority to prohibit sex discrimination in educational programs and that there is a private right of action under the Act.* We are preparing to file an amicus brief in another case involving the same issues in which HEW is not a party.**

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* Romeo Community Schools v. U.S. Department of H.E.W., 438 F. Supp. 1021 (E.D. Mich. 1977), appeals pending Nos. 77-1691 and 1692 (6th Cir.); Brunswick School Board v. Califano, Civ. No. 77-168 (S.D., Maine;) University of Toledo v. HEW, Civ. No. 77-235 (N.D. Ohio); Seattle University v. HEW, Civ. No. C77-631M (W.D. Wash.); Cannon v. University of Chicago, 406 F.Supp. 1257 (N.D. Ill. 1976) aff'd. 559 F.2d 1063 (7th Cir.1976) aff'd on rehearing 559 F.2d 1077, Pet.for Cert. pending No. 77-926.

** Leake v. University of Cincinnati, Civ. Action No. C-1-76-315 (S.D. Ohio, 1976) appeal pending No.76-2430 6th Cir.

JAN 27 1978

The reference, at page 36, to the Department of Justice's participation in Santa Clara Pueblo v. Martinez is not entirely complete. On invitation from the Supreme Court, the Department filed a memorandum in support of the tribe's Petition for Certiorari, arguing that the case presented important issues and should be heard. After certiorari was granted, the Department moved for permission to file an amicus brief supporting the position of the Indian woman alleging discrimination, but the motion was denied by the Court as untimely filed.

With respect to your recommendations, as previously noted, we would support an Executive Order extending coordination authority for Title IX enforcement to the Department of Justice, and the Department would probably implement such an order in the manner you suggest.

Our Task Force on Sex Discrimination would be pleased to work with the OMB Civil Rights Task Force in its examination of sex discrimination enforcement in federal grant programs. The Justice Task Force has already been accumulating information on such enforcement efforts from the agencies as it implements the President's August 26th Memorandum directing it to coordinate the review and revision of all federal laws, regulations, guidelines, programs and policies that result in unequal treatment based on sex.

Sincerely,

Drew S. Days, III

Drew S. Days, III
Assistant Attorney General
Civil Rights Division

U. S. GOVERNMENT PRINTING OFFICE : 1978 O - 257-972